Comment on Recent Cases

Accord and Satisfaction—Acceptance of Check Corresponding in Amount with Accompanying Statement.—In Meyer v. Cowell Lime and Cement Company,[1] defendants, who were indebted to plaintiffs, sent to plaintiffs a statement which, they claimed, set out the full amount of their indebtedness, and enclosed a check for the amount named. Plaintiffs cashed the check, but at once notified the defendants that a balance was due upon the account. On these facts it was held that the question of whether or not the transaction constituted an accord and satisfaction, as claimed by the defendants, was one for the jury. In the course of the discussion the court approved the rule that, in the case of a claim which is unliquidated, or which is the subject of a bona fide dispute, if a check tendered is stated to be given in full payment of the debt, and the tender is accompanied by such acts or declarations as amount to a condition that if the check is accepted at all it is accepted in full satisfaction of the disputed claim, **and the creditor so understands,** its acceptance by the creditor constitutes an accord and satisfaction. This rule has never before been specifically approved in California, but is supported by the great weight of authority in other jurisdictions, and was suggested as the proper rule to be adopted in this state in the March number of the California Law Review.[2] Its validity has been questioned, however, by Professor Williston, on the ground that "if as soon as the check is taken notice is promptly given to the debtor that it is not taken as satisfaction, it seems impossible to find the elements of a bargain."[3] But, adopting this view, it must follow that the cashing of the check by the creditor amounts to a conversion, and, as Professor Williston himself points out, it may be forcibly argued that "the creditor should not be allowed to assert his tortious conversion, though the effect of such a ruling is to fix upon the creditor a bargain which he never made."[4] J. U. C., Jr.

Agency: Notice to Agent as Notice to Principal.—As a rule of agency it is undoubtedly well settled that notice to the agent acting within the course of his employment and scope of his authority is notice to his principal. This rule is based either upon the legal identity of principal and agent or upon the presumption that the agent

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[1] (April 4, 1913) 16 Cal. App. Dec. 643.
[2] 1 California Law Review 257, 258.
[3] Williston's Wald's Pollock on Contracts, 3rd Edition, p. 840.
[4] Idem; and see 1 California Law Review 258.